

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,  
R.S.O. 1970 c. 318, as amended

AND IN THE MATTER OF COMPLAINTS BY CAROLE DUBNICZKY  
AND EDNA PROULX ALLEGING DISCRIMINATION IN EMPLOYMENT BY  
J.L.K. KIRIAKOPOULOS CO. LTD. AND TIFFANY'S RESTAURANT,  
117 GEORGE STREET, HAMILTON, ONTARIO.

ONTARIO  
MINISTRY OF LABOUR  
  
JUN 23 1981  
  
HUMAN RIGHTS  
COMMISSION

BOARD OF INQUIRY

PROFESSOR IAN A. HUNTER

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|---------------------|----------------------|---|
| <u>APPEARANCES:</u> | Ms. Janet E. Minor   | Counsel for the Ontario<br>Human Rights Commission<br>and the Complainants<br>Ms. Carole Dubniczky and<br>Ms. Edna Proulx |
|                     | Mr. J. Kiriakopoulos | Agent for J.L.K.<br>Kiriakopoulos Co. Ltd. and<br>Tiffany's Restaurant  |



## DECISION

On 11 December 1980 I was appointed by the Honourable Robert Elgie, Minister of Labour, as a Board of Inquiry to hear and decide the complaints of Carole Dubniczky and Edna Proulx, both of Hamilton, Ontario alleging discrimination in employment by J.L.K. Kiriakopoulos Co. Ltd. and Tiffany's Restaurant, 117 George Street, Hamilton, Ontario. On 26 May, 1981 a hearing was convened in Hamilton at which both sides gave evidence and made submissions. Since both complaints occurred on the same date and relate to the same incident, both were heard together with the consent of all parties.

A formal notice of hearing, as envisaged by section 6(2) of the Statutory Powers Procedure Act, S.O. 1971 c. 47 was not given in advance of the hearing. The date of 26 May 1981 was agreed to as most convenient by the parties, their respective solicitors, and the Board approximately ten days before the hearing which, with weekends intervening, left insufficient time to prepare and to send formal notices. However, all parties were present at the hearing, all agreed that they had adequate time to prepare for the hearing, and all wished to proceed on that date.

The essential facts giving rise to these complaints are not in dispute.

Mr. Kiriakopoulos has owned and operated Tiffany's Restaurant in Hamilton since March 13, 1977. From the evidence,



I gather that Tiffany's is a superior quality restaurant specializing in French cuisine prepared and served in the European tradition. This means, essentially, that many popular dishes, such as flambés, crepes, Caesar salad, etc., are prepared, not in the kitchen, but as it were "live" before the customer's eyes at his or her own table. Ever since his arrival in Canada from Greece, Mr. Kiriakopoulos testified that his "dream" was to operate a fine restaurant in the European tradition which means, among other things, that male waiters do the preparation of cuisine at tableside.

On 28 May 1979 the following ad appeared in the Hamilton Spectator: "Experienced waiters/waitresses in French service for elegant dining room. Apply in person to Tiffany's Continental Cuisine, 115 George Street, Hamilton (no phone calls please)."

In response to this advertisement two cousins, Carole Dubniczky age 25, and Edna Proulx age 21, attended at Tiffany's Restaurant at approximately 7:30 p.m. Both complainants testified that they spoke to a store employee at the restaurant and told him that they wanted to speak to the manager. The employee went off and spoke to the manager and then returned and indicated that the restaurant did not need anyone. The complainants then asked why the advertisement was running in the Spectator? The employee allegedly replied that the job was for male waiters only. Both complainants testified



that they were angry at this, left the restaurant, and subsequently filed with the Ontario Human Rights Commission the complaints which are the subject of this inquiry.

Mr. Kiriakopoulos' evidence was identical, except that he testified that after the waiter came and told him that two people wished to speak to the manager, he went to the lobby area of the restaurant and spoke personally to the two complainants. However, since Mr. Kiriakopoulos agrees that he told them that he was looking only for male waiters and that the reason for not considering the two complainants suitable was because they were women, nothing turns on this slight discrepancy in the evidence.

Mr. Kiriakopoulos also testified that he told the complainants that the only reason the advertisement said "waiters/waitresses" was that the Spectator required this and that any successful applicant must have had experience with French cuisine. Both complainants conceded that they lacked such experience and I accept Mr. Kiriakopoulos' evidence, buttressed by the phraseology of the advertisement, and I find that experience in the preparation and serving of French cuisine was an essential prerequisite for this position. Consequently, on the evidence presented to me, I find (a) that Mr. Kiriakopoulos refused to hire the two complainants because of their sex, and (b) that, in any event, neither of the two complainants would have been hired because they lacked an essential job prerequisite--





experience with French cuisine.

Tiffany's Restaurant does, in fact, hire women; at the time of the complaint the undisputed evidence was that there were 28 persons on the payroll at Tiffany's, of whom 18 were female. The restaurant serves lunches and also has an outdoor patio service; women are employed as waitresses at the outdoor patio, and both waiters (male) and waitresses (female) are employed for luncheon service. However, when dinner is served in the evening, only male waiters are used. It was a position for evening dinner service that Mr. Kiriakopoulos was seeking to fill on May 28, 1979.

Ms. Minor argued that the Commission had discharged the onus of proving that Mr. Kiriakopoulos and Tiffany's Restaurant refused to recruit either complainant for employment (contrary to s. 4(1)(a)), and maintained employment classifications or categories (i.e., waiter/waitresses; contrary to s. 4(1)(e)) based upon sex. There is no doubt in my mind that this is so and, in fact, Mr. Kiriakopoulos candidly indicated that he maintains the waiter/waitress classification today. Accordingly, I find that Mr. Kiriakopoulos and Tiffany's Restaurant contravened s. 4(1)(a) and (e) of the Ontario Human Rights Code by denying employment to Carole Dubniczky and Edna Proulx because of their sex.

There was no evidence adduced that would establish that sex is a "...bona fide occupational qualification and requirement"



for this particular employment (section 4(6)); indeed, Mr. Kiriakopoulos indicated that the exclusion of women waitresses in the evening was simply a "personal preference" based on the European tradition and, when asked in cross-examination whether a woman could do the job as well as a man, he replied: "Some would do it better than men. But my preference is to run it on the European model." Personal preference alone does not create a "bona fide occupational qualification" exemption from the application of the Code; if it did the statutory prohibitions on discrimination would be rendered meaningless.

Once a Board of Inquiry determines that any party has contravened the Act, the Board...may order any party...to do any act or thing that, in the opinion of the Board, constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefore." In this case I have found that Mr. Kiriakopoulos and Tiffany's Restaurant contravened sections 4(1)(a) and (e) of the Act. What should be the appropriate Board order?

Ms. Minor submitted that the Board should order: (1) the respondent to cease this discriminatory employment classification between waiters and waitresses and henceforth provide equal employment opportunities for both men and women in all positions at Tiffany's and so signify by a letter of assurance to the Ontario Human Rights Commission and by the posting of an Ontario Human Rights Code card at the business premises. In



my opinion, this will help to ensure present and future compliance with the Act and I so order.

(2) Ms. Minor also requested payment of general damages to the complainants for the inconvenience, embarrassment and injury to feelings caused by the discriminatory act of the respondent and she suggested that the appropriate "range" for such awards in recent human rights Board decisions in Ontario was \$100 to \$1000. Obviously, putting a precise figure on such an award is more art than science. Both complainants testified that they were "angry" at the fact that they were not considered for employment at Tiffany's because they were women; I accept their evidence but I do not believe that either were deeply hurt or embarrassed. Nor can I overlook the fact that to some extent they brought any inconvenience which may have been occasioned on themselves by applying for positions which they realized they were not fully qualified for. Consequently, I am satisfied that a nominal sum would rectify any injury done to the complainants and I therefore order Mr. Kiriakopoulos or Tiffany's Restaurant to pay to Carole Dubniczky the sum of \$75, and to pay to Edna Proulx the sum of \$75.

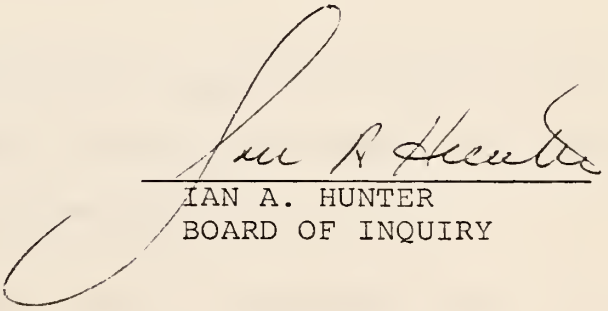
Finally, Ms. Minor submitted that both complainants should receive compensation for lost wages. Both complainants found other employment approximately one month after the refusal at Tiffany's Restaurant. Accordingly, Ms. Minor requested compensation to each complainant in the amount of \$387.60



representing one month's wages at Tiffany's Restaurant.

On the evidence it is clear that neither complainant would qualify for the position which Mr. Kiriakopoulos was seeking to fill on May 28, 1979. Accordingly I do not understand how it can be logically contended that, but for the discriminatory act, the complainants would have been employed and would have earned this amount as wages at Tiffany's Restaurant during the following month. Absent the discriminatory act, all the evidence adduced indicates that the complainants would have been turned down for employment because they lacked an essential prerequisite; namely, experience with French cuisine. Consequently, I decline to make any order of compensation for lost wages.

DATED AT the City of London in the County of Middlesex  
this 18th day of June, 1981.



IAN A. HUNTER  
BOARD OF INQUIRY





IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,  
R.S.O. 1970 c. 318, as amended;

AND IN THE MATTER OF A COMPLAINT BY CAROLE DUBNICZKY  
AND A COMPLAINT BY EDNA PROULX THAT EACH WAS DISCRIMINATED  
AGAINST IN EMPLOYMENT BY J.L.K. KIRIAKOPOULOS CO. LTD.,  
TIFFANY'S RESTAURANT, 117 GEORGE STREET, HAMILTON, ONTARIO.

O R D E R

This matter coming on for hearing on the 26th May, 1981,  
before this Board of Inquiry, pursuant to the appointment of  
Robert Elgie, Minister of Labour, dated the 11th day of  
December, 1980, in the presence of counsel for the Ontario  
Human Rights Commission and Ms. Carole Dubniczky and Ms. Edna  
Proulx, the complainants herein, and Mr. J.L.K. Kiriakopoulos,  
the respondent, upon hearing all the evidence adduced by the  
parties and what was alleged by the parties, and upon finding  
that the respondent contravened the Act.

(1) IT IS HEREBY ORDERED THAT the respondent henceforth provide  
equal employment opportunities for men and women in all positions  
of employment at Tiffany's Restaurant.

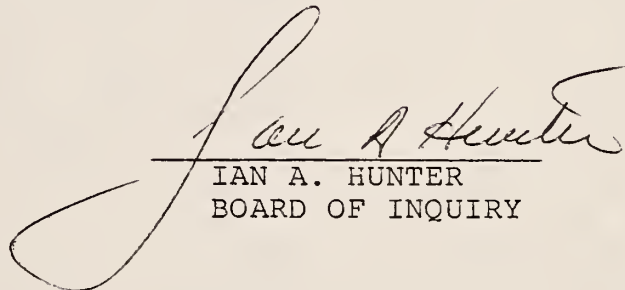
(2) AND IT IS HEREBY ORDERED THAT the respondent post a copy  
of the Ontario Human Rights Code in a prominent location at  
Tiffany's Restaurant and, by letter to the Chairman of the



Ontario Human Rights Commission, signify that henceforth his policy of employment will be in compliance with the Ontario Human Rights Code.

(3) AND IT IS HEREBY ORDERED THAT the respondent pay the sum of \$75 to Ms. Carole Dubniczky and the sum of \$75 to Ms. Edna Proulx.

DATED AT the City of London in the County of Middlesex  
this 18th day of June, 1981.

  
IAN A. HUNTER  
BOARD OF INQUIRY

